

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DANY GERALDO and
WENDOLY GUZMAN,

Case No. 2:17-CV-15 JCM (PAL)

ORDER

Plaintiff(s).

V.

RICHLAND HOLDINGS, INC., et al.,

Defendant(s).

Presently before the court is defendants Richland Holdings, Inc. d/b/a AcctCorp of Southern Nevada (“AcctCorp”) and RC Willey aka RC Willey Financial Services (“RC Willey”, collectively “defendants”) motion for attorney’s fees. (ECF No. 28). Plaintiffs Dany Geraldo and Wendoly Guzman filed a response (ECF No. 35), to which defendants replied (ECF No. 38).

L Facts

This motion arises out of the court's grant of dismissal of plaintiff's claims based on a finding of claim preclusion.

Around January 19, 2001, plaintiffs entered into a valid and binding contract for the procurement of retail merchandise with RC Willey and began incurring charges related to the contract. (ECF Nos. 1 & 28). Plaintiffs became delinquent by failing to make regular payments as owed under the terms of their contract. *Id.* In August 2010, pursuant to the RC Willey revolving charge security agreement, plaintiffs agreed that “the laws of the state in which I reside will govern the interpretation or enforcement of this Agreement.”¹ (ECF No. 28).

¹ Here, plaintiffs resided in Nevada, and defendants allege that the applicable law “does not provide a cap on interest rates or collection fees.”

1 RC Willey served plaintiffs in the underlying state court action to collect the unpaid
2 balance on plaintiffs' RC Willey account. *Id.* Plaintiffs did not participate in that action, resulting
3 in a default judgment in favor of RC Willey. *Id.*

4 Plaintiffs allege that defendants, in favor of their application for default judgment, filed a
5 "Confidential Legal Authorization" assigning plaintiffs' debt of \$8,080.38 from RC Willey to
6 AcctCorp. (ECF No. 1). Plaintiffs also allege that, included with document filings, defendants
7 filed an affidavit/declaration of custodian records that includes a contractual fee of \$4,040.19,
8 which equals fifty percent of the entire principal balance assigned to AcctCorp. *Id.* Plaintiffs also
9 claim that defendants unlawfully charged plaintiffs twenty-four percent interest on the total
10 amount due, including the contractual collection fee. *Id.*

11 On or about November 19, 2014, plaintiffs filed a voluntary petition for Chapter 13
12 bankruptcy. (ECF No. 28). Defendants allege that during the bankruptcy proceedings, plaintiffs
13 made no attempt to include the causes of action they raise in the instant litigation. *Id.* On
14 November 17, 2015, plaintiffs' debt was discharged. *Id.*

15 On January 3, 2017, plaintiffs filed their complaint, alleging that defendants committed
16 several violations of the Fair Debt Collection Practices Act (FDCPA). (ECF No. 1). Additionally,
17 plaintiffs alleged that defendants' violations caused plaintiffs to suffer substantial damages,
18 including economic damages, emotional damages, damages to their credit history and reputation,
19 as well as substantial attorney's fees. *Id.*

20 On January 30, 2017, defendants filed a motion to dismiss plaintiffs' complaint. (ECF No.
21 7). On July 26, 2017, the court granted defendants' motion to dismiss. (ECF No. 23). The court
22 held that plaintiffs' claims are precluded because plaintiffs failed to bring their current claims as
23 compulsory counterclaims in the underlying state court case. *Id.*

24 **II. Legal Standard**

25 a. 15 U.S.C. § 1692k(a)(3)

26 Under the FDCPA, if the court finds that a plaintiff brought an action in bad faith and for
27 the purpose of harassment, a prevailing defendant is entitled to "attorney's fees reasonable in
28 relation to the work expended and costs." 15 U.S.C. § 1692k(a)(3). Such an award is mandatory

1 under the FDCPA. *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991); *see also De Jesus v.*
2 *Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir. 1990).

3 In the Ninth Circuit, the starting point for determining reasonable fees is the calculation of
4 the “lodestar,” which is obtained by multiplying the number of hours reasonably expended on
5 litigation by a reasonable hourly rate. *See Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th
6 Cir. 1987). “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party
7 reasonably expended on the litigation by a reasonable hourly rate.” *Camacho v. Bridgeport*
8 *Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (internal quotations and citation omitted). In
9 calculating the lodestar, the court must determine a reasonable rate and a reasonable number of
10 hours for each attorney. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986),
11 reh’g denied, amended on other grounds, 808 F.2d 1373 (9th Cir. 1987). The lodestar is deemed
12 to be presumptively reasonable, though the district court has the discretion to consider and upward
13 or downward adjustment.

14 b. 28 U.S.C. § 1927

15 Under 28 U.S.C. § 1927:

16 Any attorney or other person admitted to conduct cases in any court of the United
17 States . . . who so multiplies the proceedings in any case unreasonably and
18 vexatiously may be required by the court to satisfy personally the excess costs,
expenses, and attorneys’ fees reasonably incurred because of such conduct.

19 *Id.*

20 “Section 1927 authorizes federal courts to punish barratry by requiring offending lawyers
21 personally to satisfy their opponents’ litigation debts. It applies in any proceeding in federal court,
22 operates solely upon attorneys, rather than their clients, and applies with equal force against
23 winners and losers.” *Schutts v. Bently Nev. Corp.*, 966 F. Supp. 1549, 1558 (D. Nev. 1997).

24 The Ninth Circuit has looked favorably upon Section 1927 penalties:

25 Imposing a monetary penalty on counsel is an appropriate sanction considerably
26 less severe than holding counsel in contempt, referring the incident to the client or
bar association, or dismissing the case . . . It is appropriate that sanctions such as
these are directed at the lawyers responsible, rather than the litigants.

27 *Miranda v. Southern Pac. Transp. Co.*, 710 F.2d 516, 520-21 (9th Cir. 1983) (internal citations
28 omitted).

1 Section 1927 sanctions are available “only to unnecessary filings and tactics once a lawsuit
2 has begun,” and do not apply to an initial pleading. *Keegan*, 78 F.3d at 435. Moreover, district
3 courts are entitled to “substantial leeway” when deciding whether sanctions are warranted pursuant
4 to § 1927. *Haynes v. City & Cty. of San Francisco*, 688 F.3d 984, 987 (9th Cir. 2012); *see also*
5 *Trulis v. Barton*, 107 F.3d 685, 694 (9th Cir. 1995).

6 Further, § 1927 does not provide sanctions for initial filings made in bad faith. 28 U.S.C.
7 § 1927; *see also Winkler*, 792 F.2d at 860. However, § 1927 does provide for actions taken
8 subsequent to filing that multiplied the proceedings “unreasonably and vexatiously.” *Id.*

9 c. *NRS § 18.010*

10 Under Nevada law, attorneys’ fees are available only when “authorized by rule, statute, or
11 contract.” *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 991, 879 P.2d 69 (1994).
12 The decision to award attorneys’ fees is left to the sound discretion of the district court. *Id.*

13 In Nevada, a court may grant a motion for attorney’s fees:

14 [W]hen the court finds that the claim . . . was brought or maintained without
15 reasonable ground or to harass the prevailing party. The court shall liberally
16 construe the provisions of this paragraph in favor of awarding attorney’s fees in all
17 appropriate situations. It is the intent of the Legislature that the court award
18 attorney’s fees pursuant to this paragraph and impose sanctions pursuant to Rule 11
19 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for
20 and deter frivolous or vexatious claims and defenses because such claims and
21 defenses overburden limited judicial resources, hinder the timely resolution of
22 meritorious claims and increase the costs of engaging in business and providing
23 professional services to the public.

24 NRS § 18.010(2)(b). “A district court has discretion to award attorney’s fees, but any award must
25 be based on evidence supporting ‘a finding that the claim or defense was unreasonable or brought
26 to harass.’” *Austin v. Life Partners, Inc.*, No. 2:11-CV-01767-PMP-GWF, 2014 U.S. Dist. LEXIS
27 23125, at *8-9 (D. Nev. Feb. 24, 2014) (quoting *Bower v. Harrah’s Laughlin, Inc.*, 125 Nev. 470,
28 215 P.3d 709, 726 (Nev. 2009)).

24 To support a discretionary award of attorneys’ fees, “there must be evidence in the record
25 supporting the proposition that the complaint was brought without reasonable grounds or to harass
26 the other party.” *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095 (Nev. 1995) (quoting
27 *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 486 (Nev. 1993)). “To the extent that a claim is

1 fraudulent, it must also be groundless.” *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d
2 720, 725 (1993).

3 **III. Discussion**

4 *a. Prevailing party standard*

5 Plaintiffs assert that defendants are not a prevailing party because the claims were
6 dismissed on the basis of subject matter jurisdiction, rather than on the merits. (ECF No. 25).
7 Defendants argue that their claims were dismissed on the basis of preclusion, which qualifies them
8 as a prevailing party for the purposes of attorney’s fees. (ECF No. 28).

9 In *Zenith Ins. Co. v. Breslaw*, the Ninth Circuit held that “because a dismissal with
10 prejudice is tantamount to a judgment on the merits, the defendant in this case is clearly the
11 prevailing party on the dismissed claims.” 108 F.3d 205, 207 (9th Cir. 1997). Accordingly,
12 defendants in this case qualify as the prevailing party. *See id.*

13 *b. 15 U.S.C. 1692k(a)(3)*

14 15 U.S.C. § 1692k(a)(3) states that:

15 (a) Amount of damages. Except as otherwise provided by this section, any debt
16 collector who fails to comply with any provision of this title [15 USCS §§ 1692 et
seq.] with respect to any person is liable to such person in an amount equal to the
17 sum of-- . . .

18 (3) in the case of any successful action to enforce the foregoing liability, the costs
19 of the action, together with a reasonable attorney's fee as determined by the court.
On a finding by the court that an action under this section was brought in bad faith
and for the purpose of harassment, the court may award to the defendant attorney's
fees reasonable in relation to the work expended and costs.

20 15 U.S.C. § 1692k.

21 Defendants allege that the suit was brought against them in bad faith and for the purpose
22 of harassment. (ECF No. 28). Defendants make assertions that nonparty Credit Restoration of
23 Nevada (“CRN”) and plaintiffs’ counsel brought this suit to attack AcctCorp and put it out of
24 business. *Id.* Defendants contend that the plaintiffs were solicited to bring the suit. *Id.* Defendants
25 also allege that the plaintiffs failed to participate in good faith during the discovery process. *Id.*

26 Defendants assert that plaintiffs’ counsel and nonparty CRN had a plan to attack AcctCorp
27 through bringing the suit. (ECF No. 28). Defendants also assert that plaintiffs’ claims were
28 baseless. *Id.* Defendants argue that the FDCPA claims against RC Willey were frivolous and

baseless because “[b]y plaintiffs’ own admission” the “claim did not and could not apply to RC Willey because RC Willey is a creditor, not a debt collector.” *Id.* Defendants also assert that plaintiffs alleged a baseless abuse of process claim based on the allegation that “[d]efendants commenced and/or prosecuted legal proceedings against Plaintiffs . . .” *Id.* Defendants claim that plaintiffs had no factual support for this abuse of process claim. *Id.*

Defendants further assert that plaintiffs acted in bad faith by asserting claims of violations of the Deceptive Trade Practices Act (“DTPA”). (ECF No. 28). Defendants assert that “plaintiffs’ DTPA claim was insufficiently pleaded by general reference to ten subsections of a statute, containing nearly one hundred (100) possible categories of conduct.” *Id.*

Defendants allege that plaintiffs acted in bad faith because plaintiffs brought the claims asserted in this case knowing that those claims were procedurally barred by the statute of limitations, judicial estoppel, and preclusion. *Id.*

Defendants contend that plaintiffs' counsel admitted to the one-year statute of limitations on the FDCPA claims, but asserted that it had not yet lapsed because plaintiffs had no way of knowing of the violations until December of 2016.² *Id.* Plaintiffs do not address the other alleged procedural deficiencies highlighted by defendant.

Multiple other courts in this district have dismissed claims brought by the same attorney against the same or similar defendants. In *Whitt v. Richland Holdings, Inc.*, counsel represented a plaintiff who brought suit against the same defendants as here, AcctCorp. and RC Willey, alleging, among other things, FDCPA violations against RC Willey. No. 2:17-cv-00014-APG-NJK, 2017 U.S. Dist. LEXIS 158415, at *8 (D. Nev. Sep. 26, 2017). In *Whitt*, the plaintiff admitted that RC Willey “is a creditor to which the FDCPA does not apply.” *Id.* The court in *Whitt* granted RC Willey’s motion to dismiss as to the FDCPA claims. *Id.*³

² Plaintiffs' argument that plaintiffs had no way of knowing of the violations because only an attorney reviewing the documents could identify the violations is unconvincing. This argument is clearly not sufficient to extend a one-year statute of limitations to three-years.

³ The court filed the *Whitt* order on September 27, 2017, after this court filed its order dismissing the FDCPA claims against defendants here. However, plaintiffs' counsel filed their response in *Whitt* in February 2017, months prior to the dismissal in this instant case, admitting that the FDCPA does not apply to RC Willey.

1 In *Laforge v. Richland Holdings, Inc.*, where plaintiffs who alleged the same DTPA
2 violations under very similar facts was represented by the same counsel, the court found that
3 plaintiffs did not “provide any factual allegations to support a claim under § 598.0915(15).” No.
4 2:17-cv-00782-APG-VCF, 2018 U.S. Dist. LEXIS 10246, at *23 (D. Nev. Jan. 23, 2018). Judge
5 Gordon repeated this same holding in *Cox v. Richland Holdings, Inc.* No. 2:16-cv-02914-APG-
6 VCF, 2018 U.S. Dist. LEXIS 9214, at *11 (D. Nev. Jan. 16, 2018) (plaintiff “does not provide any
7 factual allegations to support a claim under § 598.0915(15)”).

8 In *Laforge*, the court also discussed a similarly alleged abuse of process claim. 2018 U.S.
9 Dist. LEXIS 10246, at *19. The abuse of process claim in *Laforge* alleged that defendants
10 conducted a willful act in the use of the legal process by “attempting to collect the unlawful rates
11 of interest and by prosecuting an action based on unlawful collection practices.” The complaint
12 in the instant case made the exact same allegation.⁴ In *Laforge*, the court held that the complaint
13 did not contain sufficient facts to support the claim, but granted plaintiff “leave to amend their
14 abuse of process claim if they can add additional facts alleging that the defendants undertook
15 improper, willful acts in the state court action with an ulterior purpose.” *Id.*

16 Here, the court granted defendants’ motion to dismiss on the basis of issue preclusion.
17 (ECF No. 23). However, the sheer number of procedural and substantive defects with plaintiffs’
18 case, considered together with the holdings of other courts in similar cases brought by the same
19 counsel here and based on similar facts, demonstrates bad faith on behalf of plaintiffs. The court
20 holds that this suit was brought in bad faith and for the purpose of harassment. Therefore, the
21 court will award defendants attorney’s fees pursuant to § 1692k.

22 c. 28 U.S.C. § 1927 and NRS § 18.010

23 In light of the court’s holding regarding § 1692k, the court will not consider defendants’
24 arguments regarding 28 U.S.C. § 1927 and NRS § 18.010.

25
26
27 ⁴ The abuse of process claim in the complaint for this instant case states that “[b]y
28 attempting to collect the unlawful rates of interest and by prosecuting an action based on unlawful
collection practice committed by the Defendants, the Defendants conducted a willful act in the use
of the legal process that was not proper in the regular conduct of the proceeding.” (ECF No. 1).

1 d. Calculating fees

2 When calculating attorney's fees that flow from frivolous claims, the court begins with the
3 lodestar figure. The lodestar figure is calculated by "multiplying the hours spent on a case by a
4 reasonable hourly rate of compensation for each attorney involved." *Penn. v. Del. Valley Citizens'*
5 *Council for Clean Air*, 478 U.S. 546, 563, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986). "A 'strong
6 presumption' exists that the lodestar figure represents a 'reasonable' fee, and upward adjustments
7 of the lodestar are proper only in 'rare' and 'exceptional' cases." *Jordan v. Multnomah Cnty.*, 815
8 F.2d 1258, 1262 (9th Cir. 1987) (quoting *Del. Valley*, 478 U.S. at 565).

9 After determining the lodestar amount, the court may in its discretion, adjust the amount
10 pursuant to a variety of factors. *City of Riverside v. Rivera*, 477 U.S. 561, 569, 106 S. Ct. 2686,
11 91 L. Ed. 2d 466 (1986) ("(1) the time and labor required; (2) the novelty and difficulty of the
12 questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of
13 employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the
14 fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the
15 amount involved and the results obtained; (9) the experience, reputation, and ability of the
16 attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional
17 relationship with the client; and (12) awards in similar cases."); accord *Gonzalez v. City of*
18 *Maywood*, 729 F.3d 1196, 1209 (9th Cir. 2013); *see also Hensley v. Eckerhart*, 461 U.S. 424, 437,
19 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983) ("We reemphasize that the district court has discretion in
20 determining the amount of a fee award.").

21 The court begins its calculation by finding that defendants' counsels' hourly rate of
22 \$250.00 is reasonable. The controlling test for determining a reasonable hourly rate requires the
23 rate to be "in line with those prevailing in the community for similar services by lawyers of
24 reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 896 n.
25 11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984) (holding that the reasonable rate to apply under
26 section 1988 is the rate commonly charged in the local legal community); *Welch v. Metro. Life Ins*
27 *Co.*, 480 F.3d 942, 946 (9th Cir. 2007). "[N]ormally the relevant legal community for determining

1 the prevailing market rates for attorney's fees is the community in which the forum is situated.”
2 *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1993).

3 Here, the relevant community is Las Vegas, Nevada. In Las Vegas, a \$250.00 hourly rate
4 is reasonable. *See, e.g., Marrocco v. Hill*, 291 F.R.D. 586, 589 (D. Nev. 2013) (finding hourly
5 rates between \$375.00 and \$400.00 reasonable in Las Vegas); *Snow v. McDaniel*, No. 3:08-cv-
6 00046-RCJ-VPC, 2014 U.S. Dist. LEXIS 21345, 2014 WL 590489, at *1 (D. Nev. Feb. 14, 2014)
7 (Jones, J.) (finding a \$250.00 hourly rate reasonably within the context of a section 1988 inquiry);
8 *see also Gibbs v. Rivers Transp. Group, Inc.*, No. 2:13-cv-00935-JAD-NJK, 2014 U.S. Dist.
9 LEXIS 6311, 2014 WL 204928, at *3 (D. Nev. Jan. 17, 2014) (finding a \$250.00 hourly rate
10 reasonable in Las Vegas); *Conboy v. Wynn Las Vegas, LLC*, No. 2:11-cv-01649-JCM-CWH, 2012
11 U.S. Dist. LEXIS 173711, 2012 WL 6100313, at *3 (D. Nev. Dec. 7, 2012) (same); *Am. Gen. Life
12 Ins. Co. v. Futrell*, No. 2:11-cv-00977-PMP-CWH, 2012 U.S. Dist. LEXIS 161930, 2012 WL
13 5497901, at *3 (D. Nev. Nov. 13, 2012) (finding hourly rates between \$250.00 and \$400.00
14 reasonable in Las Vegas).

15 Additionally, as discussed above, a “strong presumption” exists that the lodestar figure
16 represents a reasonable fee. *Jordan*, 815 F.2d at 1262. Neither plaintiff nor their counsel identified
17 any persuasive reason as to why the lodestar amount should be adjusted.

18 Defendants’ counsel attaches a billing statement listing the total hours worked on this
19 litigation. Counsel billed 87.30 hours to AcctCorp and 56.90 hours to RC Willey. The court holds
20 that the hourly billing statements constitute reasonable work spent defending this litigation. The
21 court will award fees for the hours accrued since January 11, 2017, when defendants’ counsel
22 received the complaint. Calculating the defendants’ fees accrued since January 11, 2017, yields
23 \$34,853.50 (\$21,114.50 for AcctCorp and \$13,739.00 for RC Willey).

24 The court holds that all costs billed in defending this action were reasonably incurred. *See*
25 (ECF No. 28-15 at 24). The court will award defendants \$1,495.61 in costs.

26 ...

27 ...

28 ...

1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED that defendants' motion for attorney fees (ECF No. 28) be,
4 and the same hereby is, GRANTED.

5 IT IS FURTHER ORDERED that defendants shall prepare a proposed judgment consistent
6 with the foregoing and submit it to the court within twenty-one (21) days for signature.

7 DATED March 30, 2018.

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9 _____
10 UNITED STATES DISTRICT JUDGE